IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3615 OF 1993

Khar Seven Stars Co-operative
Housing Society Ltd. ..Petitioners

versus

Ramesh Arjun Arora & Anr. ..Respondents

Mr. D. G. Bagwe for the Petitioners.

Mr. S. K. Chinchalikar, AGP for the Respondents No. 2 - State.

CORAM : D. G. DESHPANDE, J.

DATE : 11TH OCTOBER, 2006

ORAL ORDER :

1. Heard Advocate for the petitioner, and learned AGP for the respondent No.2 State. Nobody is present for the respondent No.1.

2. Petitioner is a Co-operative Housing Society. They had filed dispute against certain persons, one of them is opponent No. 4 Ramesh Arjun Arora, i.e. respondent No.1 herein. It was filed under Section 91A of the Maharashtra Co-operative Societies Act and order came to be passed by the

Judge of the Co-operative Court against all the opponents restraining them amongst other things from making any changes, alterations and additions in the said garage or any part thereof. Thereafter, the petitioner filed application before the said court on 20.2.1992 alleging contempt of the aforesaid order of the courts below by the respondent No.1 herein. That application came to be rejected by the Co-operative Court by order dated 28.8.1992 and therefore this petition directly to this court.

3. Counsel for the petitioners however admitted that the original dispute filed against the respondent No. 4 before the Co-operative Court has been dismissed long back. Therefore two obstructions in the way of the petitioners, particularly in this petition. Firstly he is alleging breach of ad interim or interim order. His prayer for contempt was rejected and the dispute is no longer survives or exists as on today. Whether there was an encroachment or breach of order of injunction, is a question of fact which will have to be gone into and decided on merits. If the dispute is not at all survive, then there is no forum which can decide this question of fact. Therefore, on

this ground also the petition is not maintainable.

4. Secondly, whether breach of the every order of the court amounts to contempt and action for contempt should be taken is also a serious question. If interim order or ad interim order is not adhered to or breach is committed of the order by some of the parties even under C.P.C. remedies are available against those defaulting opponents or respondents. The court can take action against those persons under those powers and it is not necessary always to invoke the powers under the Contempt of Courts Act. The Cooperative Court after hearing the parties has not accepted the case of the petitioners that it is a contempt. Therefore, there is no merit in this petition. It is dismissed. Rule is discharged. It is however clarified that if extension of the garage by the respondent No.1 is illegal, the petitioners society will be at liberty to take appropriate action under the relevant provisions of law against him. Petition disposed of. No order as to costs.

(D.G. DESHPANDE, J.)